

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE TERRELL HOPSON,

Plaintiff,

v.

HARRY ENTZ, et al.,

Defendants.

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: 1:21-CV-1944
: (JUDGE MARIANI)
: (Magistrate Judge Schwab)
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:
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ORDER

AND NOW, THIS 3rd DAY OF MARCH, 2023, upon review of Magistrate Judge Susan Schwab's Report and Recommendation ("R&R") (Doc. 39) for clear error or manifest injustice, **IT IS HEREBY ORDERED THAT:**

1. The R&R (Doc. 39) is **ADOPTED** for the reasons set forth therein, except as specifically modified herein in ¶ 4(d).
2. Defendants' Motion to Dismiss Plaintiff's Amended Complaint (Doc. 30) is **GRANTED IN PART AND DENIED IN PART.**
3. The following claims are **DISMISSED WITHOUT PREJUDICE:**
 - a. All Eighth Amendment claims against defendant Frey;
 - b. The Eighth Amendment claims against defendant Entz based on the alleged later assaults on October 2, 2021, by the non-defendant corrections officers;
 - c. All Eighth Amendment claims against defendant DeFrancesco;
 - d. All Eighth Amendment conditions-of-confinement claims;

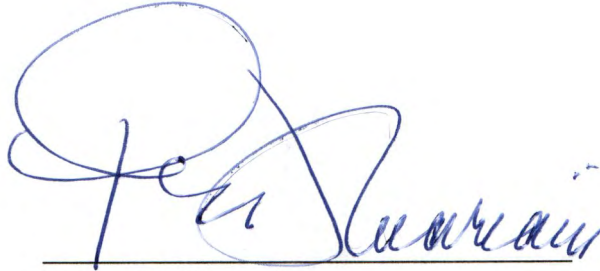
- e. All Fourteenth Amendment substantive due process claims;
- f. All First Amendment claims;
- g. All Fourth Amendment claims;
- h. All Fifth Amendment claims;
- i. All Sixth Amendment claims.

4. The following claims are **NOT DISMISSED**:

- a. The Eighth Amendment excessive force claim against defendant Entz based on the first alleged assault on Hopson on October 2, 2021;
- b. The Eighth Amendment excessive force claim against defendant Winner based on the October 27, 2021 incident in I-pod;
- c. The Eighth Amendment medical claim against defendant Lain based on Hopson not receiving his prescribed eye drops in December 2021;
- d. All Eighth Amendment medical claims based on the time Hopson was confined in the MSMU in October 2021.¹

¹ Although the R&R ultimately recommends dismissal of this claim by Plaintiff, upon review of the amended complaint, the Court finds that Plaintiff's factual allegations sufficiently, but barely, state an Eighth Amendment medical claim upon which relief can be granted against defendants based upon the time Plaintiff was confined in the MSMU in October 2021.

5. Plaintiff may file a Second Amended Complaint within **30 days** of the date of this Order. Failure to file the amended complaint will result in this case proceeding based on Plaintiff's Amended Complaint (Doc. 25).²
6. The case is **REMANDED** to Magistrate Judge Schwab for further proceedings consistent with this Order.

A handwritten signature in blue ink, appearing to read "Robert D. Mariani", is written over a horizontal line.

Robert D. Mariani
United States District Judge

² If filing a second amended complaint, Plaintiff is advised to follow Judge Schwab's direction as to what the complaint must include, set forth in footnote 20 of the Report and Recommendation (Doc. 39 at 45-46).